

which the failure continues shall be deemed a separate offense.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(Pub. L. 99-198, title XVI, § 1651, Dec. 23, 1985, 99 Stat. 1627.)

#### **§ 4911. Investigation and power to subpoena**

(a) The Secretary may make such investigations as the Secretary deems necessary to carry out effectively the Secretary's responsibilities under this chapter or to determine whether a person has engaged or is engaging in any acts or practices that constitute a violation of any provision of this chapter, or of any plan or regulation issued under this chapter. For the purpose of an investigation, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents that are relevant to the inquiry. The attendance of witnesses and the production of records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a handler (or an importer who is subject to the plan), the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring the person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by the court as contempt thereof. All process in any such case may be served in the judicial district in which the person is an inhabitant or wherever the person may be found. The site of any hearing held under this subsection shall be within the judicial district in which the person is an inhabitant or in which the person's principal place of business is located.

(b) No person shall be excused from attending and testifying or from producing books, papers, and documents before the Secretary, or in obedience to the subpoena of the Secretary, or in any cause or proceeding, criminal or otherwise, based on, or growing out of, any alleged violation of this chapter, or of any plan or regulation issued thereunder, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However, no person shall be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter, or thing

concerning which the person is compelled, after having claimed the person's privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(Pub. L. 99-198, title XVI, § 1652, Dec. 23, 1985, 99 Stat. 1628; Pub. L. 103-189, § 8(h), Dec. 14, 1993, 107 Stat. 2262.)

#### **AMENDMENTS**

1993—Subsec. (a). Pub. L. 103-189, in first sentence, substituted “a person” for “a handler or any other person”, in fourth sentence, inserted “(or an importer who is subject to the plan)” after “a handler”, and in last sentence, substituted “the person” for “the handler or other person”.

#### **§ 4912. Requirement of referendum**

(a) The Secretary shall conduct a referendum among producers, handlers, and importers not exempt under sections 4902(5) and 4907(b) of this title who, during a representative period determined by the Secretary, have been engaged in the production, handling, or importing of watermelons, for the purpose of ascertaining whether the issuance of a plan is approved or favored by producers, handlers, and importers. The ballots and other information or reports that reveal or tend to reveal the vote of any producer, handler, or importer or the person's volume of watermelons produced, handled, or imported shall be held strictly confidential and shall not be disclosed. Any officer or employee of the Department of Agriculture violating the provisions hereof shall be subject to the penalties provided in section 4908(c) of this title.

(b) A plan issued under this chapter shall not take effect unless the Secretary determines that the issuance of the plan is approved or favored by a majority of the producers and handlers (and importers who are subject to the plan) voting in the referendum.

(Pub. L. 99-198, title XVI, § 1653, Dec. 23, 1985, 99 Stat. 1629; Pub. L. 103-189, §§ 2, 8(i), Dec. 14, 1993, 107 Stat. 2259, 2262.)

#### **AMENDMENTS**

1993—Pub. L. 103-189 designated existing provisions as subsec. (a), added subsec. (b), and in subsec. (a) substituted “, handlers, and importers” for “and handlers” in two places and “, handling, or importing” for “or handling” in first sentence, substituted “, handler, or importer” for “or handler” and “, handled, or imported” for “or handled” in sentence beginning with “The ballots”, and struck out after first sentence “The referendum shall be conducted at the county extension offices. No plan issued under this chapter shall be effective unless the Secretary determines that the issuance of the plan is approved or favored by not less than two-thirds of the producers and handlers voting in such referendum, or by the producers and handlers of not less than two-thirds of the watermelons produced and handled during the representative period by producers and handlers voting in such referendum, and by not less than a majority of the producers and a majority of the handlers voting in the referendum.”

#### **§ 4913. Suspension or termination of plans**

(a) Whenever the Secretary finds that a plan or any provision thereof obstructs or does not